

**REMARKS**

Applicants believe that the amendments to the claims, when read in light of the following remarks, place the present application in a condition for allowance. Applicants respectfully request that the Examiner conclude the same.

**Interview Summary**

Applicants thank Dr. Khare for discussing aspects of the outstanding Office Action with Applicants' representative, Daniel R. Evans, on or about January 16, 2007. The content of the discussion is reflected in the amendments to the claims and the remarks contained herein.

**Discussion of the Amendments**

Applicants amend the present application so as to: (1) amend the elected claims 31, 39-40, 42-46, 51-52, 56, and 58-59; (2) cancel elected claims 41 and 53; (3) cancel non-elected claims 1-30; and (4) add new claims 61-75. Amendments to the elected claims (see points (1)-(2)) serve to improve readability and to obviate certain objections and rejections and are discussed below. The non-elected claims are canceled without prejudice and are represented as new dependent claims. Applicants respectfully request that the examiner rejoin claims 61-75 once allowance is deemed proper. Upon entry of the amendment, claims 31-40, 42-52, and 54-75 will be pending. No new matter is believed to be added upon entry of the amendment.

**Objections to the Specification and Claims**

The Specification at page 1, lines 4-5, recites a priority claim to 60/453,715, filed August 1, 2002. This corresponds to the information contained in the unsigned Declaration filed August 1, 2003. A signed Declaration filed December 11, 2003 contains a claim of priority to 60/453,715 and U.S. 60/453,716. The priority claim to 60/453,716 is incorrect. Therefore, Applicants believe that it is unnecessary to amend the Specification because the priority claim to 60/453,716 in the Declaration filed December 11, 2003 is incorrect. A natural question, then, is whether the Declaration of record is defective. Applicants believe that the Declaration is not defective because this error can be corrected by way of an Application Data Sheet. Applicants have concurrently filed the same so as to correct this error.

Applicants believe that a supplemental Declaration is unnecessary because a domestic priority claim is not required under Rule 63. Although a foreign priority claim is contemplated under Rule 63 (see 37 CFR 1.63(c)(2)), a priority claim to a U.S. provisional application under 35 U.S.C. § 119(e) is not. Assuming that the provision directed to a foreign priority claim can be analogized to a domestic priority claim (see 37 CFR 1.63(c)(2)), then Rule 63 indicates that the domestic priority claim may be contained either in the Declaration or the Application Data Sheet (see 37 CFR 1.76). Indeed, Rule 76 contemplates that priority information is correctable so as to "correct or update information in a previously submitted...declaration under § 1.63" (see 37 CFR 1.76(c)(1)). Accordingly, Applicants request that the Examiner find that this information is correctable by way of the concurrently filed Application Data Sheet. Applicants also request that the Examiner find that the Declaration of record is without objection.

Applicants also request that this information be corrected in the Office's bibliographic database because PAIR also erroneously shows that the present application claims priority to 60/453,716.

Objections to the claims are corrected by way of amendment so as to harmonize the use of "," and ";".

### **Rejections of Record**

#### **(1) Rejection of claims 31-45 and 58-60 under the enabling clause of 111**

Applicants have amended the claims so as to remove "and/or prophylaxis," as it is believed that a method of treatment necessarily provides for prophylaxis. Because the basis of the rejection is the presence of the term "prophylaxis," Applicants believe that the rejection is now moot and so should be withdrawn.

#### **(2) Rejection of certain claims as being indefinite.**

Applicants have amended the claims so as to remove the "such as" and "capable of" clauses. Applicants note that the functional limitation preceded by the words "capable of" is unnecessary because this merely recites an inherent property of the recited compounds. Regardless, because the outstanding rejections are based on these particular terms, amendment of

the claims so as to remove these terms renders the outstanding rejection moot. Withdrawal of the rejection is respectfully requested.

(3) Rejection of certain claims as being anticipated by certain references.

The rejections of any one of claims 31-60 as being anticipated under either 102(b) or 102(e) over certain U.S. Patent disclosures 6,542,021 (Mueller), 5,627,160 (Lin), 5,990,093 (Schinazi) and over certain non-patent disclosures the Lin publication (Biochem. Pharm. 1994, 47(2), 171-174), the Gagnon publication (Immunopharm. and Immunotoxic. 1995, 17(1), 17-32), and the Locatelli publication (J. Mol. Biol. 2001, 313, 683-694) are obviated by amendment.

Applicants ask that the Examiner consider that the cited disclosures disclose compounds identified by the following formula, with the particular substituents identified below.

Reference	Y	Z	X	R	Citation
US 6,542,021	NH <sub>2</sub>	F	O	H	64:18
	NH <sub>2</sub>	SH	O	H	64:19
	NH <sub>2</sub>	H	O	H	64:20
US 5,627,160	NH <sub>2</sub>	H, halo, CH <sub>3</sub>	O	H	Fig. 1b
	NH <sub>2</sub>	H, halo, CH <sub>3</sub>	S	H	Fig. 8b
US 5,990,093	NH <sub>2</sub>	H	O	H	Fig. 1
Lin publication	NH <sub>2</sub>	H, F	O	H	p. 172
Gagnon publication	NH <sub>2</sub>	H, F	O	H	p. 20
Locatelli et al.	NH <sub>2</sub>	H	O	H	p. 685

The Examiner will appreciate that the claims are amended so that the recited formulations contain compounds not disclosed or suggested in any of the above-cited references. For instance, claim 31 is amended so as to disclaim hydrogen as a possible substituent of R for the compound in the pharmaceutical composition. Claim 39 is amended to disclaim "halogen and C<sub>1-6</sub> alkyl" as a possible substituent of Z' for the compound in the pharmaceutical composition. Claim 40 is amended to disclaim hydrogen as a possible substituent of R<sup>6</sup> for the compound in the pharmaceutical composition. Claim 42 is also amended to disclaim hydrogen as a possible substituent of R<sup>6</sup> for the compound in the pharmaceutical composition. Claim 46 is amended so as to disclaim hydrogen as a possible substituent of R for the compound in the pharmaceutical composition. Claim 51 is amended to disclaim "halogen and C<sub>1-6</sub> alkyl" as a possible substituent

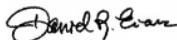
of Z' for the compound in the pharmaceutical composition. Claim 52 is amended so as to disclaim hydrogen as a possible substituent of R for the compound in the pharmaceutical composition. Claim 54 is amended to disclaim hydrogen as a possible substituent of R<sup>6</sup> for the compound in the pharmaceutical composition. In view of these amendments, Applicants believe that the outstanding rejections are now obviated. Applicants further believe that the pending claims are free of any other rejections under sections 112, 102, and 103. Applicants kindly request that the Examiner acknowledge the same and pass the present application to issue. In view of the remarks contained herein, Applicants respectfully request a Notice of Allowance. If the Examiner believes that a discussion would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

**Request for Extension of Time**

Applicants concurrently file with the present response a Request for a Three-Month Extension of Time under 37 CFR 1.136(a) with an authorization to charge the requisite fee under 37 CFR 1.17(a)(3) to Applicants' representative Deposit Account 13-2725. If for any reason the Request is separated from the present response, then Applicants authorize the Office to charge the above-noted Deposit Account to pay any necessary fees so as to maintain the pendency of the present application.



Respectfully submitted,  
MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(404) 954-5061

A handwritten signature in black ink that reads "Daniel R. Evans".

---

Daniel R. Evans, Ph.D.  
Registration No. 55,868

Date: April 6, 2007